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**IN THE
COURT OF APPEALS OF INDIANA**

ENCHANTED HILLS COMMUNITY
ASSOCIATION, INC.,

Appellant-Defendant,

VS.

DANIEL R. LYON and
ROXANNA LYON,

Appellees-Plaintiffs.

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No. 43A04-0512-CV-0700

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Duane G. Huffer, Judge
Cause No. 43D01-0504-PL-272

October 17, 2006

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Judge

The Lyons live in a subdivision in Cromwell called Enchanted Hills. Although the property owners in the subdivision live on streets such as Tiny Tim Lane, Snow White Road, Candy Cane Lane, Cinderella Drive, and Goldilocks Lane, the Lyons' Prince Charming began to look suspiciously amphibious when they learned that their property management association was planning to erect a fence along one side of their property, impeding their access to a publicly-dedicated area.

Appellant-defendant Enchanted Hills Community Association, Inc. (Enchanted Hills), appeals from the trial court's order granting summary judgment in favor of appellees-plaintiffs Daniel R. and Roxanna L. Lyon. Specifically, Enchanted Hills argues that the grant of summary judgment was erroneous because there is a genuine issue of material fact with respect to the ownership of the alleged public way at issue. Finding no error, we affirm the judgment of the trial court.

FACTS

Enchanted Hills is an Indiana nonprofit corporation responsible for managing community property and enforcing recorded restrictions for all properties in the Enchanted Hills subdivision (the Subdivision), which is located on Lake Wawasee in Cromwell. The Lyons own Lot 344 of the Subdivision. On September 27, 1961, the Plat and restrictive covenants for Section I of the Subdivision were recorded. Among other things, the restrictive covenants provide as follows: "This subdivision shall be known and designated as ENCHANTED HILLS, SECTION I. All streets, boat channels, and other public areas shown and not heretofore dedicated, are hereby dedicated to the public." Appellees' App. p. 22.

On October 7, 1975, the developer of the Subdivision executed a quitclaim deed to Enchanted Hills conveying whatever interest the developer retained in the real estate described in the Plat. Among other things, the quitclaim deed conveyed the following:

All that road and street area not previously dedicated to Kosciusko County which is located North and West of, and adjacent to, Memorial Parkway and Street of Dreams as shown on the recorded Plat of Enchanted Hills, Section I.

The dedication of the above described property to the use of the public, or owners of property in Enchanted Hills, as the case may be, is hereby expressly confirmed.

Id. at 36.

Adjoining Lot 344 is a public area (Public Area) that serves, among other things, as an access point to adjoining boat lots. The Lyons contend that the Public Area also serves as a public access to Lot 344. At some point, Enchanted Hills notified the Lyons that it intended to erect a fence on the common line between Lot 344 and the Public Area.

On April 11, 2005, the Lyons filed a complaint against Enchanted Hills, seeking a permanent injunction preventing the erection of the fence. Among other things, the Lyons alleged that the fence would deprive them of direct access to the Public Area, make access to Lot 344 less convenient, and cause a loss in Lot 344's property value. On June 3, 2005, Enchanted Hills filed a counterclaim against the Lyons, seeking an injunction relating to the Lyons' use of the Public Area and statutory treble damages and attorney fees for the Lyons' alleged criminal trespass of the Public Area.

On September 26, 2005, the Lyons filed a motion for summary judgment on their complaint and Enchanted Hill's counterclaims, arguing that the Plat and quitclaim deed

gave the Lyons, as a matter of law, a superior interest to that of Enchanted Hills in the Public Area. Following a hearing, the trial court granted summary judgment in favor of the Lyons on November 4, 2005, finding that the Public Area “is a public way giving access to various lots owned by various people,” granting the requested permanent injunction, finding in favor of the Lyons on Enchanted Hills’ counterclaims, and assessing costs to Enchanted Hills. Appellant’s App. p. 1-2. Enchanted Hills now appeals the portion of the order enjoining it from erecting the fence.¹

DISCUSSION AND DECISION

Enchanted Hills argues that the trial court erred in granting summary judgment in favor of the Lyons because there is a genuine issue of material fact regarding the intended use of the Public Area. As we consider this argument, we observe that summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning, 754 N.E.2d at 909. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. Id.

¹ Although Enchanted Hills nominally appeals the entire summary judgment order, it includes no argument in its brief regarding its counterclaims or the trial court’s assessment of costs. Consequently, it has waived any argument with respect to those issues. See Ind. Appellate Rule 46(A)(8)(a) (requiring that each argument be supported by citations to authorities and cogent reasoning).

If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

An appellate court faces the same issues that were before the trial court and follows the same process. Id. at 908. The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court. Id.

The primary document herein is the 1975 quitclaim deed, which includes the original Plat and restrictive covenants. See King v. Ebrems, 804 N.E.2d 821, 828 (Ind. Ct. App. 2004) (holding that when lands are granted according to a plat, the plat becomes part of the grant or deed by which the land is conveyed with respect to the limitations placed upon the land). Thus, in determining the meaning of the deed, we must also look to the other documents. Id.

In interpreting a deed, the object is to identify and implement the intent of the parties to the transaction as expressed in the plain language of the deed. Kopetsky v. Crews, 838 N.E.2d 1118, 1123 (Ind. Ct. App. 2005). Whenever possible, we apply the terms of the deed according to their clear and ordinary meaning. Id. Courts may resort to extrinsic evidence to ascertain the intent of the parties only where the language of the deed is ambiguous. Id. A deed is ambiguous if it is susceptible to more than one interpretation and reasonably intelligent persons would honestly differ as to its meaning. Id.

Similarly, in interpreting restrictive covenants, we determine the parties' intent from their expressions within the four corners of the document. King, 804 N.E.2d at 828. If the language is clear and unambiguous, we give that language its plain, usual, and ordinary meaning. Id. Only if the language is ambiguous must we determine its meaning by extrinsic evidence. Id.

Here, in addition to the visual depiction of the Subdivision in the Plat, there are essentially two relevant provisions describing and conveying the Public Area. The first is a restrictive covenant contained within the original recorded Plat: "All streets, boat channels, and other public areas shown and not heretofore dedicated, are hereby dedicated to the public." Appellees' App. p. 22. The second is a provision contained within the 1975 quitclaim deed conveying the portion of the Subdivision that includes the Public Area:

All that road and street area not previously dedicated to Kosciusko County which is located North and West of, and adjacent to, Memorial Parkway and Street of Dreams as shown on the recorded Plat of Enchanted Hills, Section I.

The dedication of the above described property to the use of the public, or owners of property in Enchanted Hills, as the case may be, is hereby expressly confirmed.

Id. at 36.

Enchanted Hills concedes that the Public Area is dedicated to the public and that one of its purposes is to provide access to the adjoining boat lots. But Enchanted Hills also essentially argues that we cannot determine from the language within the four corners of the documents whether the Lyons—who own Lot 344, which is directly

adjacent to the Public Area, but do not own a boat lot—have a protected interest in their ability to access the Public Area along the common line between Lot 344 and the Public Area.² Thus, we must determine whether it is apparent from the language of the documents that the owners of real estate abutting publicly-dedicated areas in the Subdivision have a protected interest in their ability to access public areas from their private properties.

The parties herein crystallize this issue by arguing about whether the Public Area is a public street—the Lyons insist that it is, whereas Enchanted Hills contends that its status cannot be determined from within the four corners of the documents. Thus, Enchanted Hills argues that summary judgment was improper, inasmuch as we must resort to extrinsic evidence—creating a genuine issue of material fact—to resolve the issue.

If the Public Area is a public road, street, or highway, then the Lyons prevail, inasmuch as they possess an ownership interest in the property that would prevent the erection of a fence impeding their access to the Public Area. See Abbs v. Town of Syracuse, 655 N.E.2d 114, 115 (Ind. Ct. App. 1995) (holding that ownership of a lot abutting a street “extends to the center of the street, subject only to an easement of the public for the use of the street”); House-Wives League, Inc. v. City of Indianapolis, 204 Ind. 685, 185 N.E. 511, 513-14 (1933) (holding that “no one can have a right to

² If the proposed fence is erected, it will impede the Lyons’ ability to access the Public Area from the common line between the two properties, but they—and all other members of the public—would still be able to access the Public Area from the point of ingress and egress on Street of Dreams.

permanently divert a street, or any part of a street, to private purposes” and that “[t]he right to pass and repass upon a public highway is not restricted to any part, for the public are entitled . . . to a free passage along any portion of [the highway] not in the actual use of some other traveler”).

Even if we accept for argument’s sake that it is not apparent from the face of the relevant documents whether the Public Area was intended to be a public road, street, or highway, it is not necessarily the case that Enchanted Hills prevails. Rather, we must examine the documents to determine whether they unambiguously convey to the Lyons an interest in being able to access the Public Area from its common boundary line with Lot 344. The restrictive covenant dedicates to the public all streets, boat lots, and other public areas not dedicated prior to the time the document was recorded. The quitclaim deed expressly confirms the dedication of a portion of the Subdivision, including the Public Area, to “the use of the public, or owners of property in Enchanted Hills, as the case may be” Appellees’ App. p. 36.

We draw two conclusions from this unambiguous language. First, although it is true that, in examining the Plat, the Public Area is clearly intended to provide access to the boat lots, nothing in the documents limits the Public Area to that use alone. Second, the Public Area is dedicated to the use of the public and owners of property in Enchanted Hills. The Lyons fall into both categories. Inasmuch as Lot 344 abuts the Public Area, we can only conclude based on this unambiguous language that their ownership interests in Lot 344 and the Public Area include the right to use the common boundary line of the two parcels of land as a means of ingress and egress. Consequently, the trial court

properly determined as matter of law that the Lyons are entitled to summary judgment on their complaint.

The judgment of the trial court is affirmed.

MATHIAS, J., and BARNES, J., concur.